

**Testimony of the Office of the Public Defender,
State of Hawaii,
to the House Committee on Judiciary**

January 25, 2013

H.B. NO. 28 RELATING TO JURY SELECTION.

Chair Rhoads and Members of the Committee:

H. B. 28 would eliminate the requirement for our current form of “random” jury selection in state courts. It appears that this is to allow for different modes of selection. For the reasons stated below, we oppose this bill.

As the late and highly respected William S. Richardson School of Law Professor Jon Van Dyke observed, “how faithfully juries reflect a community’s cross-section depends on the success of a series of procedures through which juries are chosen”. He went on to say, “The jury representing a cross-section of the community, randomly selected, conforms to our commitment to a pluralistic society and a democratic government”.

It is our current “random” process of jury selection that would no longer be required under the provisions of this bill. The concern here is that whenever we veer from the random process to a more selective or “discretionary” process, the greater the possibility for discrimination in selection. Additionally, any “discretionary” process essentially rewards the party with the greater resources to investigate and research every person on the list of potential jurors. It encourages gamesmanship to get to the jurors that one’s research has indicated will be the best for one’s particular case. The random form of selection is the best defense against this kind of uneven playing field because even if one has greater resources to do such research and investigation, you have to think twice about excusing a juror when you have no idea who will be called to sit in their place.

Furthermore, since our new statute would no longer mandate a particular form of jury selection, individual trial judges would be left with the discretion to decide which form to use in a particular case, with the possibility of different judges using different methods. The losing party would likely challenge on appeal the form of selection chosen by the judge, increasing the number of appeals filed and the length of the appellate process since jury selection would become a common issue for appeal (which it currently is not), occasioning added costs for the transcripts of jury selection (averaging about \$200 to \$300 per day) which in the case of public defender appeals would be borne by taxpayers.

We don’t believe that our current system is flawed and believe this proposal is unnecessary. Thank you for the opportunity to comment on this bill.

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THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-seventh State Legislature
Regular Session of 2013
State of Hawai'i

January 25, 2013

RE: H.B. 28; RELATING TO JURY SELECTION.

Chair Rhoads, Vice-Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments, expressing concern, regarding House Bill 28.

The intent of H.B. 28 is unclear, as it would not only require that all trial juries contain twelve jurors—that much is clear—but would also delete language from section 635-26, Hawaii Revised Statutes, that currently guides the jury selection process. As written, H.B. 28 seems to suggest eliminating the jury selection process altogether, to simply "draw a jury by lot." If that is the intent of H.B. 28, this could pose a number of problems in providing defendants with an "impartial jury" for criminal trials.

Nevertheless, sections 635-27 through 635-30, Hawaii Revised Statutes, still go on to explain various means by which individual jurors may be "challenged" and ultimately excused from a jury. Thus, it is difficult to anticipate what the ultimate effect would be if H.B. 28 were passed into law.

Thank you for the opportunity to testify on this matter.